IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2140 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
MEENABEN PANKAJKUMAR JOSHI & 5 - Defendant(s)

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Appearance :
MS LILU K BHAYA for Appellant(s) : 1,
MR SANDEEP N BHATT for Defendant(s) : 1 - 4.
None for Defendant(s) : 5,
RULE SERVED for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal at the instance of the Insurance Company is directed against the judgment and award dated 13.12.2005 passed by Mr CH Koshti, Motor Accident Claims Tribunal, Fast Track Court-4, Gandhidham- Kutch in MAC Petition No.297 of 2005 (original No.2 of 1998) awarding compensation of **Rs.49,25,000/-** with proportionate costs and with interest at the rate of 12% per annum from the date of the claim petition till December 2000 and thereafter at the rate of 9% per annum.

2. By the same award, the Tribunal also provided for **disbursement of 40%** of the amount to the claimants (widow, two minor children and widowed mother of the deceased) and investment of 60% of the amount in fixed deposits for a period of five years with permission to the claimants to withdraw periodical interest.

There is no dispute about the fact that if the Insurance Company had to deposit the entire amount with proportionate costs and interest, **the total amount to be deposited would have been in the region of about Rs.90 lakhs and odd amount and, therefore, Rs.36 lakhs and odd amount (40% of the total amount) would have been disbursed, if the Insurance Company had not filed the present appeal and this Court had not granted any stay**.

3. When the appeal was admitted on 11.7.2006, this Court also granted ad-interim stay of execution of the award under challenge on condition that the applicant-Insurance Company shall deposit a sum of RS.25 lakhs with the Tribunal. The Insurance Company accordingly deposited Rs.25 lakhs in all, and total sum of Rs.22.50 lakhs has been invested in fixed deposits and disbursement is made of the balance Rs.2.50 lakhs.

4. On 26.10.1997, deceased Pankajkumar Joshi, (husband of claimant No.1, father of minor claimant Nos.2 and 3 and son of claimant No.4) was driving Opel Astra car on the Morbi-Rajkot highway. At about 1.30 in the wee hours, when the deceased reached village Kagdadi, the truck insured by the appellant-Insurance Company was parked on the road without any signal, reflector or tail lamp. The Opel Astra car being driven by the deceased hit the rear portion of the truck resulting into serious injuries. The deceased was shifted to the Tankara Government Hospital for treatment where he succumbed to the injuries.

The widow, two minor children and widowed mother of the deceased filed the claim petition for compensation of Rs.1 crore on the ground that the accident was caused by the negligent parking of the truck on the middle of the road without any reflector, side signal or tail lamp. The claimants' case was that the deceased was Director of Kandla

Clearing Agency Pvt. Ltd. receiving a monthly salary of Rs.7500/- per month and was also doing proprietary business in the name of Ultra Clearing and Forwarding Company.

5.1 The Tribunal held that the accident was caused mainly by the negligent parking of the truck on the middle of the road and that the truck driver was negligent to the extent of 85%. The Tribunal also held that the deceased was guilty of contributory negligence to the extent of 15%.

5.2 On the question of quantum of compensation, the claimants had produced income-tax returns for the Assessment Years 1996-97 and 1997-98 at Exhs.36 and 37 respectively disclosing salary income for Directorship in Kandla Clearing Agency Pvt. Ltd. at Rs.66,000/- and Rs.90,000/- respectively. Both the returns were filed after the accident with the following notes :-

> “1. The assessee has not filed the return of income upto 1995-96 as his income was below the exempt limit.
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> 2. The assessee has expired on 26.10.1997 as such the return has been filed by his legal heir Smt. Meena Pankaj Joshi (claimant No.1 in the claim petition and respondent No.1 herein).”

Both the returns were accompanied by the certificate issued by Manager/Accountant of Kandla Clearing Agency Pvt. Ltd.. It was also the case of

the claimants that the deceased had set-up another business of his own in May 1997 in the name of Utra Clearing and Forwarding Company and to show that the deceased was earning substantial income from the said business, the claimants produced certified photocopy of the ledger account entries issued by the State Bank of Bikaner and Jaipur at Gandhidham. On the basis of the said entries, the Tribunal gave a finding that the turnover of the said business for eight months was Rs.12.73 lakhs and the Tribunal further accepted the claimants' case that profit margin on such turnover would be 20%. Impressed by the entries in the said ledger account issued by the State Bank of Bikaner and Jaipur, the Tribunal made the following observations:-

> “Moreover Bank statement produced at Ex.39 shows the name of Utra clearing and forwarding company and the name of deceased. It shows that the company of deceased, in a very short span, had secured good business. Looking to the statement of the bank transaction. It shows the turnover of Rs.12.73 lacs. As per petitioner, looking to the turnover, marginal commission can be calculated at 20%, so income from the business is arrived at Rs.2.40 lacs approximate in 8 months and Rs.25,000/- should be assessed per month, so by this way deceased was earning more than 30,000/- per month at the time of accident.”

Thereafter the Tribunal further held that since the deceased was aged about 32 years on the date of the accident, his future prospective income be considered at Rs.42,000/- per month.

5.3 Deducting one-third therefrom as the personal expenses which the deceased would have incurred on himself, the Tribunal assessed the net monthly dependency benefit at Rs.28,000/- i.e. Rs.3,36,000/- per annum. Adopting the multiplier of 17, the Tribunal worked out the compensation for loss of dependency benefit at Rs.3,36,000 X 17 = Rs.57,12,000/-. In view of the finding that the deceased was negligent to the extent of 15%, the Tribunal reduced the amount of compensation for loss of dependency benefit to Rs.48,55,200/- and made the final award for compensation under the following heads :-

Rs.48,55,200/-	For loss of dependency benefit
Rs. 50,000/-	For loss to the estate
Rs. 10,000/-	For loss of consortium
Rs. 10,000/-	For obsequial ceremonies
Rs.49,25,000/-	Total

The Tribunal further awarded interest at the rate of 12% per annum from the date of the claim petition till December 2000 and thereafter at the rate of 9% per annum.

6. The Insurance Company for the truck is in appeal before us and Ms Lilu Bhaya, learned counsel

for the appellant has challenged the judgment and award on the following grounds :-

(i) The Tribunal erred in attributing 85% negligence to the truck driver, even though the truck was lying in a stationary condition and the deceased driving the Opel Astra car could have easily avoided the accident. It was on account of excessive speed at which the deceased was driving Opel Astra that the accident took place causing fatal injuries to the deceased who was driving the car. It is submitted that if at all any negligence could be attributed to the truck driver, it could not have been more than 50% and that the deceased car driver ought to have been held responsible for the accident to the extent of at least 50%.

(ii) The Tribunal erred in relying upon the income-tax returns filed by widow of the deceased for the salary income allegedly earned by the deceased as Director of the Company for two years prior to the date of the accident. It is submitted that the claimants had failed to produce any authentic satisfactory documentary evidence of any date prior to the date of the accident for showing that the deceased was a Director in Kandla Clearing Agency Pvt. Ltd.

with a monthly salary of Rs.7500/- per month.

(iii) It is also vehemently submitted that the Tribunal erred in taking into consideration the alleged income from Ultra Clearing and Forwarding Company when neither the claimants had filed any income-tax return for the said income even after the accident nor had the deceased paid any advance tax on such alleged income prior to his death;

(iv) The Tribunal erred in holding that the actual monthly income of the deceased at the time of the accident was Rs.30,000/- and that his prospective future income would have been Rs.42,000/- per month.

(v) Lastly it is contended that the Tribunal also erred in awarding interest at the rate of 12% per annum and that interest ought not to have been awarded at a rate higher than 7.5% per annum.

7. On the other hand, Mr Sandeep N Bhatt, learned counsel for respondent Nos.1 to 4 (original claimants) has not only supported the findings given by the Tribunal regarding computation of compensation under various heads, but has further submitted as under : -

(i) The Tribunal erred in holding that the deceased was guilty of contributory negligence. Since the truck was parked in the middle of the road in the dead of night without any tail lamp, reflector or any other signal, the entire responsibility for the accident was that of the negligent truck driver who parked the truck in that condition. The deceased could never be treated as having contributed to the accident in any manner whatsoever ;

(ii) As regards the salary income of the deceased, it is submitted that apart from the certificate issued by the Manager of Kandla Clearing Agency Pvt. Ltd. certifying that the deceased was a Director of the Company since 1990 and was drawing remuneration of Rs.7500/- per month, the certificate of Rajiv Gandhi Memorial Shipping Performance Award – 1995 issued on 21.5.1996 by the Award Selection Committee comprising of no less a person than the Commissioner of Customs, Kandla was clinching enough to sustain the finding of the Tribunal of the fact that the deceased was a Director of Kandla Clearing Agency Pvt. Ltd.;

(iii) As regards income from Ultra Clearing and Forwarding Company, there was no dispute about the authenticity of the ledger entries issued by the State Bank of Bikaner and Jaipur and, therefore, the Tribunal was justified in assessing the income on the basis of the entries in the ledger account.

(iv) The rate of interest to be paid on the compensation amount as awarded by the Tribunal is proper.

8. We first take up the issue of negligence. The evidence produced by the claimants on this issue was the First Information Report lodged by the truck driver at Exh.32, the panchnama at Exh.33, the post-mortem report at Exh.34 and the deposition of Anil J Gadhavi at Exh.43 who claimed that his car was following the car being driven by the deceased at a distance of 15 to 20 feet and that he had taken the deceased to the Tankara hospital. The said witness also stated that the truck was parked near Kagdadi village on the Morbi-Rajkot highway without any signals and without any barricade behind the truck.

9. Before referring to the contents of the First Information Report which was lodged by the truck driver at 17.25 hours on 26.10.1997 (Exh.32), we would prefer to refer to the contents of the panchnama (Exh.33) which was drawn by the concerned Police Sub Inspector between 9-00 and 10-00 AM on the

same day. From the said panchanama, the following facts emerge :-

(i) The accident took place on the Rajkot Morbi State highway;

(ii) The truck in question was parked on the asphalt road. All the wheels of the truck were on the asphalt road;

(iii) A substantial part of the Opel Astra car (inadvertently described as Maruti Opel Astra 16) was lying under the truck;

(iv) Both the front doors of the car had bent and the top hood of the car was crushed till the rear seat of the car.

In view of the above contents of the panchnama, we find considerable force in the submission of Mr Bhatt for the original claimants that for whatever reason the truck was required to be parked, the truck ought to have been parked on the kachchha shoulder of the road and not on the asphalt road.

The argument of the learned counsel for the appellant-Insurance Company that the panchnama does not indicate that there was any kachchha shoulder on either side of the asphalt road, has to be stated to be rejected because the Court would like to take

judicial notice of the fact that the State highways are two lane roads with kachchha shoulders on either side. Though the panchnama does not indicate the exact width of the road, it is well known that the asphalt road on a State Highway is wide enough for passage of two vehicles. In this situation, parking of the truck on the asphalt road was itself an act of gross negligence compounded by the absence of any reflector or tail light on the rear side of the truck. During night hours, even a person driving his car at reasonable and moderate speed would not be in a position to notice such truck parked on a Highway from a distance long enough to stop the car so as to avoid any accident. We, therefore, fail to see any justification for attributing any negligence to the deceased who was driving the car.

10. The view being taken by us also finds support from the decision of another Division Bench of this Court in a similar case in **Premlata Nilamchand Sharma vs. Hirabhai Ranchhodbhai Patel, 1983 ACJ 290**. In that case the deceased was driving a scooter on a foggy December evening. The scooter collided with a trailer attached to the tractor which was stationed on the left side of the road. It was so stationed without taking the requisite and statutory precautions, such as reflector and the red tail light at the rear with the result that the deceased could not notice the tractor. This Court held that the first act of negligence on the part of the tractor driver consisted of the manner in which he had parked

the tractor and the trailer, because the left hand rear wheel of the tractor and the trailer were on the edge of the asphalt road, but there was no reason why the driver did not park the tractor and the trailer entirely off the asphalt road so as to avoid all possibility of an accident. That was all the more so as the tractor lay on the road in the darkness of the night and there were no reflectors or working rear lights. This Court held in terms that it was the duty of the truck driver to park his truck and trailer absolutely off the asphalt road and on the kachchha strip so that the entire asphalt road would be left open and unobstructed for the other users of the highway.

11. In the facts of the present case also, the truck was parked on the asphalt road without any reflectors or working tail lights. Any person driving a car on the State highway in the early morning hours would never expect any vehicle like a truck parked on the highway and that too without any reflector or any other signal. We are, therefore, of the view that the accident was caused entirely on account of the negligence of the car driver and that no negligence could have been attributed to the deceased who was driving the Opel Astra car.

12. Coming to the question of quantum of compensation, the learned counsel for the Insurance Company even went to the extent of challenging the finding of the Tribunal that the deceased was a

Director of Kandla Clearing Agency Pvt. Ltd.. It is submitted that the deceased had not filed any income-tax returns prior to the date of the accident and that even the certificate produced by the claimants was issued by a person purporting to be Manager/Acountant of the Kandla Clearing Agency Pvt. Ltd., but the certificate (Exh.38/C) did not bear any date. It is submitted that no appointment order was produced nor was any extract from the Registrar of Companies produced.

13. In view of these objections, we have made closer scrutiny of the evidence, and we find that the claimants had also produced on record an Award Certificate dated 21.5.1996 issued by the Rajiv Gandhi Memorial Shipping Performance Award Selection Committee at Exh.40/C. The award was given to “Shri Pankaj Joshi (deceased), Director of Kandla Clearing Agency Pvt. Ltd. in recognition of the outstanding contribution in the promotion of shipping trade at Kandla major port as Best Executive in private sector.”

One of the members of the Selection Committee was Mr R Mukhopadhyay, Commissioner of Customs, Kandla and another member was Mr SK Somiyajulu, Ex. Chairman, Kandla Port. The authenticity of this certificate has not been doubted and we see no reason to doubt the claimants' case that the deceased was a Director of Kandla Clearing Agency Pvt. Ltd..

14. In that view of the matter, it would also not be unreasonable to accept the claimants' case that the deceased was drawing salary of Rs.7500/- per month as a Director of Kandla Clearing Agency Pvt. Ltd. as certified in the certificate at Exh.38/C. It is true that the income-tax returns were filed by the widow of the deceased after the accident and that no returns were filed by the deceased prior to the date of the accident, but once the fact that the deceased was a Director in Kandla Clearing Agency Pvt. Ltd. is accepted, the monthly salary of Rs.7500/- being paid to the Director of a Clearing Agency at a major port like Kandla port cannot be stated to be unreasonable or excessive. We are, therefore, of the view that the salary income of the deceased as a Director of Kandla Clearing Agency Pvt. Ltd. at Rs.90,000/- per annum is required to be accepted. Of course, the income-tax of Rs.7500/- was required to be paid thereon, and was paid with the return filed after the accident.

15. The next question is whether the deceased had any other source of income and if yes, what was the actual income which the deceased was getting from such source prior to the accident.

16. Mr Sandeep Bhatt for the original claimants has vehemently submitted that State Bank of Bikaner and Jaipur is a subsidiary of State Bank of India and that ledger account entries issued by the said Bank spanning over a period from 16.5.1997 to 28.10.1997

reflect the extensive scale and volume of the business which was being carried on by the deceased in the name of Ultra Clearing and Forwarding Company. The gross receipts for the period of six months were to the tune of Rs.12,73,693/- plus the subsequent entries made in the month of October which would take the total deposits to almost Rs.14 lakhs plus and the deceased had a net credit balance of Rs.99,896/- in the said account. It is, therefore, submitted that for such lucrative business of clearing and forwarding, the assessment of actual monthly income of the deceased at Rs.30,000/- per month inclusive of the salary income of Rs.7500/- per month and the assessment of prospective future income at Rs.42,000/- per month is very much within the brackets and that the Tribunal committed no error in assessment and computation of compensation for loss of dependency benefit.

17. Even proceeding on the basis that the deceased had set-up another business in the name of Ultra Clearing and Forwarding Company in May 1997 and even proceeding on the basis that there were deposits in the bank accounts of the deceased with State Bank of Bikaner and Jaipur, we cannot at all approve of the approach of the Tribunal in proceeding on the basis that the margin of profit or margin of commission of the deceased in the said business was to the extent of 20%. The very nature of the business of the deceased being that of clearing and forwarding agent would mean that the deceased would be acting as

an agent of the consignors or consignees and, therefore, such receipts would to a substantial extent be the price of the goods being consigned. The very fact that after the accident the widow of the deceased filed income-tax returns for the salary income of the deceased for the previous years 1995-96 and 1996-97 but did not file any income-tax return for the subsequent year i.e. 1997-98 for the alleged business income allegedly earned between May and October 1997 belies the claimants' case that the deceased was getting substantial income from the business being carried on by him in the name of Ultra Clearing and Forwarding Company. We are, therefore, shocked to find that the Claims Tribunal accepted the claimants' case about the alleged income of the deceased from the business in the name of Ultra Clearing and Forwarding Company without making any probe into such tall claim and without testing the claimants' case even on the touchstone of plain commonsense.

18. Even so, while interfering with the finding of the Tribunal assessing actual income of the deceased at Rs.30,000/- per month and prospective future income at Rs.42,000/- per month, having regard to the fact that the deceased was a Director with Kandla Clearing Agency Pvt. Ltd. and was drawing monthly salary of Rs.7500/- per month i.e. Rs.90,000/- per annum (net income Rs.82,500/-) and also having regard to the certificate issued in recognition of the outstanding contribution of the

deceased in the promotion of shipping trade at the Kanda port as Best Executive in private sector, we are of the view that there is enough material on the record to come to the conclusion that with passage of time, the deceased would have earned higher income and as per the conventional formula (doubling the actual income, adding the actual income thereto and the aggregate of the two to be halved), such higher income would be required to be assessed at an amount 50% higher than the actual income of the deceased on the date of the accident, which would mean prospective future income of Rs.1,35,000/- per annum. Deducting one-third therefrom as the personal expenses of the deceased, the net dependency benefit to the claimants would be Rs.90,000/- per annum. Since the deceased was aged 32 years on the date of the accident and also considering the entrepreneurship of the deceased, the multiplier of 17 adopted by the Tribunal does not call for any interference. Hence the compensation for loss of dependency benefit would work out to Rs.90,000 X 17 = Rs.15,30,000/-. Adding thereto, the conventional amount of Rs.25,000/- for loss to the estate, Rs.15,000/- to the widow for loss of consortium and Rs.5,000/- for funeral expenses, the total amount of compensation works out to Rs.15,75,000/-.

19. In view of our finding that the entire responsibility for the accident in question was that of the truck driver and that the deceased car driver could not be held guilty of any contributory

negligence, the claimants are entitled to receive total compensation of Rs.15,75,000/- with proportionate costs.

20. At this stage, we would also refer to the decision of this Court in **United India Insurance Co. Ltd. vs. Damor Kacharabhai Ganabhai, 2006 (2) GLH 441** relied upon by Mr Bhatt for the claimants in support of the proposition that in the claim proceedings under the Motor Vehicles Act, strict rules of evidence, such as proof beyond reasonable doubt in criminal cases and preponderance of probabilities in civil cases cannot be made applicable and that if a finding has been given by the Tribunal on the basis of some evidence on record, the appellate Court should not interfere with the finding of the Tribunal.

21. There can be no dispute about the proposition that strict rules of evidence would not apply in the claim proceedings under the Motor Vehicles Act. The Division Bench, however, did not purport to restrict the scope of the powers of the appellate Court and rightly observed that if a finding has been given by the Tribunal on the basis of the evidence on record which can reasonably be arrived at by the Tribunal then only the appellate Court should not interfere. **The foregoing discussion would show that there was no evidence on record before the Tribunal to arrive at the conclusion that on the credit amount of Rs.12.73 lakhs, the deceased**

was getting commission of 20% as held by the Tribunal. The finding of the Tribunal on this score is, therefore, not only incorrect and unwarranted, but to say the least, perverse. No reasonable person instructed in this branch of law would ever arrive at such conclusion that the deceased was getting commission of 20% of the gross deposits made in his bank accounts. The finding can never be said to be based on judicial considerations.

22. Reliance was also placed by Mr Bhatt on the decision of this Court in **Ritaben vs. Ahmedabad Municipal Transport Service, 2000 ACJ 153**. That was a case where the Tribunal refused to take into account the income of the deceased which she was getting as share of profit from a partnership firm only on the ground that the deceased was a sleeping partner and that his name was added in the partnership only for the purpose of income-tax. This Court did not approve of such reasoning and held that the managerial power of a partner or the extent of contribution in the management of the partnership firm in the case of a sleeping partner may be less or insignificant but it has nothing to do with the earnings and profit which is, contractually, sharable and available to a partner in whatever status or capacity he is.

In the facts of the present case, the decision relied upon is not at all relevant.

23. As regards the rate of interest, the learned counsel for the appellant-Insurance Company has vehemently submitted that in the recent decisions, the Hon'ble Supreme Court has been awarding interest at the rate of 7.5% per annum vide Tamilnadu State Road Transport Corporation vs. Rajapriya, 2005 (6) SCC 236, New India Assurance Co. vs. Charlie, 2005 ACJ 1131 and TNSTC vs. KI Bindu, 2005 (8) SCC 473.

24. On the other hand, Mr Bhatt for the original claimant has placed reliance on the decision in **Ritaben vs. Ahmedabad Municipal Transport Service, 2000 ACJ 153** in support of the contention that the Tribunal was justified in awarding interest at the rate of 12% per annum till December 2000 and thereafter at the rate of 9% per annum.

Reliance is also placed by Mr Bhatt for the claimants in National Insurance Co. Ltd. vs. Prembai Patel, 2005 ACJ 1323 in support of the contention that interest at the rate of 12% per annum for the period upto December 2000 is justified.

25. We have examined this question at some length in our recent decision dated 20.11.2006 in First Appeal No.2590 of 2006 and connected appeals. We may also refer to the recent decision of the Apex Court in **Tejinder Singh Gujral vs. Inderjit Singh, 2007 (1) SCC 508**, wherein the Apex Court has held as under:-

> "17. So far as the question of interest is concerned, it is true that the same need not be claimed specifically. Interest is granted by way of compensation but, as has been held in Abati Bezbaruah vs. Dy. Director General, Geological Survey of India (2003 (3) SCC 148), the same must be a reasonable one. In Abati Bazbaruah this Court directed payment of interest only at the rate of 9% per annum, whereas the rate of interest awarded in favour of the claimant was @ 12% per annum.
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> ....
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> 22. The learned Single Judge has awarded interest at the rate of 12% per annum. The rate of interest now granted is 9% per annum keeping in view the drastic fall in the bank rate. We, therefore, do not intend to interfere with the said direction of the High Court."

26. We cannot also lose sight of the fact that the accident in question took place in October 1997 and in the award made on 13.12.2005, a major portion of the compensation is for loss of dependency benefit by adopting multiplier of 17 years. That means for loss of dependency benefit which would have been available to the claimants for 10 years after the award also interest is being awarded at the rate of 9% per annum. Seen in that light, interest awarded at the rate of 9% per annum for a period of 7 years from the date of the claim petition till the date of the award can never be said to be on the lower side.

Having regard to the prevalent rate of interest, we are of the view that interest at the rate of 9% per annum from the date of the claim petition till the date of deposit shall meet with the

ends of justice.

27. We are also shocked to learn that the Tribunal after having awarded compensation of Rs.49,25,000/- with proportionate costs and interest at the rate of 12% per annum for the period upto December 2000 and thereafter at the rate of 9% per annum, which would have worked out to about Rs.90 lakhs, further provided in the award for disbursement of 40% of the amount to the claimants (widow, two minor daughters and widowed mother of the deceased) i.e. about Rs.36 lakhs would have been disbursed if the Insurance Company had not filed the present appeal and this Court had not granted any stay.

28. The Tribunal has overlooked the principles reiterated and the observations made by the Apex Court in Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274 and TN State Road Transport Corporation Ltd. vs. S. Rajapriya, (2005) 6 SCC 236.

29. In Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274 (paras 28 and 29), the Hon'ble Supreme Court has reiterated the principles laid down in General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas, (1994) 2 SCC 176 (para 23) and in Lilaben Udesing Gohel vs. Oriental Insurance Co. Ltd., (1996) 3 SCC 608 (para 17) in the following terms :-

"23. In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this Court in Union Carbide Corpn. vs. Union of India, (1991) 4 SCC 584 in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. In that case approving the judgment of the Gujarat High Court in Muljibhal Ajarambhai Harijan vs. United India Insurance Co. Ltd., 1982 (1) 23 GLR 756, the Apex Court laid down the following guidelines :-

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rouge to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal

will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which Investment in long term fixed deposits is made it should be on condition that the Bank-will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need

be one such FDR can be liquidated."

"29. Further, in Lilaben Udesing Gohel vs. Oriental Insurance Co. Ltd., (1996) 3 SCC 608, the Court relied upon the said directions and further held that in Union Carbide Corporation case (1991) 4 SCC 584, this Court did not include the clause regarding literate persons' compensation and directed that it should be given the same treatment in case the Court found it necessary to do so to protect the compensation awarded to them. The Court further added one guideline as under (pp 618-19, para 17) :-

> "We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the court/tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be up to 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the courts/tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. *We are sure that the courts/tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them.* The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the courts/tribunals."
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> [emphasis supplied]

30. The above principles have also been followed in TN State Transport Corporation Ltd. vs. S. Rajapriya, (2005) 6 SCC 236.

31. In view of the above discussion, the appeal is partly allowed. The award passed by the Tribunal is modified. Respondent Nos.1 to 4 (original claimants) are held to be entitled to receive total compensation of Rs.15,75,000/- with proportionate costs and with interest at the rate of 9% per annum from the date of the claim petition till the date of deposit.

The amount deposited under Section 140 of the Motor vehicles Act, 1988 and the amount of Rs.25 lakhs deposited by the appellant-Insurance Company in compliance with this Court's order dated 11.7.2006 shall be adjusted against the amount required to be deposited under this judgment and the deficit shall be deposited by the appellant- Insurance Company with the Tribunal by 15th April 2007.

32. Out of the amounts to be so deposited hereafter, the Tribunal shall invest 90% of the amounts in more than one fixed deposits with a nationalized bank near the residence of the claimants for a period of three years and the balance amount shall be disbursed to the claimants by account payee cheques.

The amounts to be invested as per this judgment as well as, as per the interim order dated 11.7.2006 shall continue to remain invested for a period of five years subject to the usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the claimants to withdraw the interest periodically accruing on such fixed deposits and with a direction to the Bank that the bank accounts of the claimants shall not be permitted to be operated by any power of attorney holder who is not a close relative of the claimants.

Considering the recent increase in the rate of interest as compared to the rates prevailing on 19.8.2006 when the amounts aggregating to Rs.22.50 lakhs were invested in fixed deposits, we clarify that it will be open to the claimants to request the Tribunal to instruct the Bank for premature encashment of the fixed deposits taken out at that time and to reinvest the amounts in fixed deposits with a nationalized bank so as to enable the claimants to earn higher rate of interest, but such reinvestment shall also be subject to the usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the claimants to withdraw the interest periodically accruing on such fixed deposits and with a direction to the Bank that the bank accounts of the claimants shall not be permitted to be operated by

any power of attorney holder who is not a close relative of the claimants.

33. At this stage, Mr Bhatt for the respondent-claimants prays for certificate under Article 133 read with Article 134A of the Constitution.

34. We have merely applied the principles for assessment and computation of compensation in motor vehicle accident cases which are by now well settled. Hence, the case does not involve a substantial question of law of general importance which, in our opinion, needs to be decided by the Hon'ble Supreme Court. We, therefore, decline to grant the certificate as prayed for.

35. A copy of this judgment shall be placed before the Hon'ble Chief Justice for taking such action as may be deemed appropriate after considering the observations made in paragraphs 2, 17, 19, 21, 27 to 29 of this judgment compelling us to reduce the amount of compensation (from Rs.49,25,000/- with proportionate costs and interest at the rate of 12% per annum for a part of the period till December 2000 and thereafter at the rate of 9% per annum) to Rs.15,75,000/- with proportionate costs and and with interest at the rate of 9% per annum from the date of the claim petition till the date of deposit.

(M.S. SHAH, J.) (AKIL KURESHI, J.)

zgs/-